

REMARKS

Claims 1-17 are pending, no claims being added, cancelled or amended herein.

With regard to the question of priority under §102(g), applicants respectfully submit that there is no such question. In particular, the present invention as claimed and the invention claimed in U.S. Pat. No. 6,875,545 are patentably distinct, because Eurlings '545 fails to teach or suggest each and every limitation of the present invention as claimed for at least the reasons discussed below with respect to the rejection under 35 U.S.C. §102(e). Moreover, applicants point out that the present application and U.S. Pat. No. 6,875,545 do not appear to be assigned to a common entity. According to the records of the USPTO, a copy of respective printouts of which are attached, U.S. Pat. No. 6,875,545 is assigned to ASML Masktools, B.V., while the present application is assigned to ASML Netherlands, B.V.

Claims 1-17 stand rejected under 35 U.S.C. §102(e) as being anticipated by Eurlings '545, Fritze or Sugita. Applicants respectfully traverse the rejections.

In order for a reference to anticipate a claim, "[e]very element of the claimed invention must be literally present, arranged as in the claim" and "[t]he *identical invention* must be shown *in as complete detail* as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989) (emphasis added and internal cites omitted). Each of the cited references fails to teach each and every limitation of the invention as claimed – and the Office Action fails even to allege that they do teach each and every limitation, instead improperly appearing to aim at what the Examiner has considered to be the gist of the present invention rather than the invention as claimed (see discussion bridging pages 3 and 4 of the Office Action).

The rejection based on Eurlings '545 fails to allege that Eurlings '545 teaches or suggests that the first pattern includes a desired dark isolated feature in a bright local region and is dark proximate the bright local region or that the second pattern is dark in a region substantially corresponding to the bright local region and bright in a wider region around the local region as recited in claim 1. Applicants can find no reference at all in Eurlings '545 to any "dark isolated feature" nor does there appear to be any suggestion to perform the claimed method.

Fritze fails in similar fashion to provide any disclosure or suggestion at all regarding the same two recitations of claim 1. In fact, in setting out the rejection based on Fritze, the Office Action specifically mentions Fritze's method as being employed "to produce *a dense*

feature illumination pattern on the substrate” (emphasis added). A dense feature is the opposite of an isolated feature as recited in the claim. To the extent that Fritze is relevant, it not only fails to disclose a method using the recited “dark isolated feature,” it teaches away from such a feature.

The discussion of Sugita similarly fails to explain where each and every element of the claimed invention may be found in the reference. The Office Action does not provide any alleged correspondence between the elements of the claims and the disclosure of Sugita. Furthermore, the discussion of Sugita bridging pages 5 and 6 fails to discuss in any way many of the claim elements, including, but not limited to, the same two discussed above.

Finally, nowhere in the Office Action is there any specific discussion of claims 5, 6, or 8-17 and where, if anywhere, the additionally recited limitations of these claims might be found in the art cited. Applicants understand this to mean that the Examiner does not believe that those claim elements are present in the cited art and that the claims are therefore patentable over that art.

Because the Office Action has failed to set forth a proper *prima facie* case of anticipation, and because none of the references cited, alone or in any proper combination, teaches or suggests the present invention as claimed, Applicants respectfully request that the rejections under 35 U.S.C. §102(e) be withdrawn.

Please charge any fees associated with the submission of this paper to Deposit Account Number 033975. The Commissioner for Patents is also authorized to credit any over payments to the above-referenced Deposit Account.

Respectfully submitted,

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